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Receipt #: 1210239
Requestor:
LAS VEGAS CITY (PLANNING)
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CLARK COUNTY RECORDER

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TITLE OF DOCUMENT (DO NOT Abbreviate)

Agreement
City of Las Vegas Development
Agreement

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City of Las Vegas - Planning

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City of Las Vegas Development Agreement

Submittal

October 21, 2011



CARWIN
ADVISORS

**FIRST AMENDMENT AND RESTATEMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN
CITY OF LAS VEGAS
AND
KAG PROPERTY, LLC**

June 2011

THIS FIRST AMENDMENT AND RESTATEMENT TO THE DEVELOPMENT AGREEMENT is made and entered into this 1ST day of FEBRUARY, 2012 by and between the **CITY OF LAS VEGAS**, a municipal corporation of the State of Nevada ("City") and **KAG Property, LLC**, a Nevada limited liability company ("Master Developer").

RECITALS

A. City has authority, pursuant to NRS Chapter 278 and Title 19 of the Code, to enter into development agreements such as this Agreement, with persons having a legal or equitable interest in real property to establish long-range plans for the development of such property.

B. City and Kyle Acquisition Group, LLC entered into a development agreement which became effective on August 8, 2007 ("Original Agreement").

C. Wachovia Bank, acting as the managing creditor of 41 total creditors, foreclosed on the Property on September 23, 2008. A new entity was formed called KAG Property, LLC.

D. Master Developer and City desire to amend, incorporate, restate and supersede the Original Agreement.

E. Master Developer acknowledges that it is the legal owner of the Property described on Exhibit "A" attached hereto. Master Developer and City desire to enter into this Agreement in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law.

F. The parties acknowledge that this Agreement will further the goals and values of City as provided by (i) Resolution R-176-2004 adopted by the City Council, (ii) City's Centennial Hills Sector Plan and (iii) the Las Vegas 2020 Master Plan.

G. The parties further acknowledge that this Agreement will (i) provide for public services, public uses and urban infrastructure, (ii) promote the health, safety and general welfare of City and its inhabitants, (iii) minimize uncertainty in planning for and securing orderly development of the Property and surrounding areas, (iv) insure attainment of the maximum efficient utilization of resources within City at the least economic cost to its citizens, and (v) otherwise achieve the goals and purposes for which the laws governing development agreements were enacted.

H. As a result of the development of the Property, City will receive needed jobs, sales and

other tax revenues, significant increases to its real property tax base and substantial improvements to the public infrastructure. City will additionally receive a greater degree of certainty with respect to the phasing, timing and orderly development of City infrastructure by a developer with significant economic resources and experience in the development process.

I. Master Developer understands and acknowledges that there are insufficient public services available in order to properly construct and populate the Community. Subject to the terms and conditions of this Agreement, Master Developer agrees to provide those necessary public services, facilities and infrastructure improvements on the Property and outside the Property as specifically provided for herein.

J. Master Developer desires to obtain reasonable assurances that it may develop the Community in accordance with the terms, conditions and intent of this Agreement. Master Developer's decision to enter into this Agreement and commence development of the Community is based on expectations of proceeding and the right to proceed with the Community in accordance with this Agreement and the Applicable Rules.

K. Master Developer further acknowledges that this Agreement was made a part of the record at the time of its approval by the City Council and that Master Developer agrees without protest to the requirements, limitations, and conditions imposed by this Agreement.

L. The City Council, having determined that this Agreement is in conformance with Resolution R-176-2004, the Centennial Hills Sector Plan and the Las Vegas 2020 Master Plan, and that all other substantive and procedural requirements for approval of this Agreement have been satisfied, and after giving notice as required by the relevant law, and after introducing this Agreement by ordinance at a public hearing on January 4, 2012, and after a subsequent public hearing to consider the substance of this Agreement on February 1, 2012, the City Council found this Agreement to be in the public interest and lawful in all respects, and approved the execution of this Agreement by the Mayor of the City of Las Vegas.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION ONE

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

“Affiliate” of any person means (a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person and (b) any other Person that beneficially owns at least fifty percent (50%) of the voting common stock or partnership interest or limited liability company interest, as applicable, of such Person. For the purposes of this definition, “control” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, partnership interests, by contract or otherwise; and the terms “controlling” or “controlled” have meanings correlative to the foregoing.

"Agreement" means this first amendment and restatement to the development agreement and at any given time includes all addenda and exhibits incorporated by reference and all amendments which hereafter are duly entered into in accordance with the terms of this Agreement.

“Alcohol Related Uses” means any alcohol uses as defined in the UDC.

“Applicable Rules” means and refers to:

- (a) The provisions of the Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date;
- (b) This Agreement;
- (c) The Design Guidelines; and
- (d) The term “Applicable Rules” does not include:
 - (i) Any ordinances, laws, policies, regulations or procedures adopted by a governmental entity other than City;
 - (ii) Any fee or monetary payment prescribed by City ordinance which is uniformly applied to all development and construction subject to the City's jurisdiction; or
 - (iii) Any applicable state or federal law or regulation.

“BLM” means the Bureau of Land Management.

“Building Codes” means the following codes: 2009 International Residential Code; 2009

International Building Code; 1997 Uniform Administrative Code; 2006 Pool Code; 2006 Uniform Plumbing Code; 2005 National Electric Code; 2006 Uniform Mechanical Code; 2009 International Conservation Code; and National Fire Protection Agency 1, to the extent adopted by the City and subject to any modifications that are adopted by the City.

"CCRFCD" means the Clark County Regional Flood Control District.

"CCSD" means the Clark County School District.

"City" means the City of Las Vegas, together with its successors and assigns.

"City Council" means the Las Vegas City Council.

"City Infrastructure Improvement Standards" means in their most recent editions and with the most recent amendments adopted by the City, the Standard Drawings for Public Works Construction Off-site Improvements, Clark County, Nevada; Uniform Standard Specifications for Public Works Construction Off-site Improvements, Clark County, Nevada; Uniform Regulations for the Control of Drainage and Hydrologic Criteria and Drainage Design Manual, Clark County Regional Flood Control District; Design and Construction Standards for Wastewater Collection Systems of Southern Nevada; and any other engineering, development or design standards and specifications adopted by the City Council. The term includes standards for public improvements and standards for private improvements required under the UDC. The term does not include the Kyle Canyon engineered drawings contained in the Design Guidelines.

"City Manager" means the person holding the position of City Manager at any time or their designee.

"Code" means the Las Vegas Municipal Code, including all ordinances, rules, regulations, standards, criteria, manuals and other references adopted therein.

"Community" means the Property and any and all improvements provided for or constructed thereupon.

"Designated Builder" means any legal entity that owns any parcel of real property within the Community, provided that such entity is designated as such by Master Developer to City Manager in writing. For purposes of the Applicable Rules, the term "Designated Builder" is intended to differentiate between the Master Developer and any other entity, including an Affiliate, partner or corporation related to Master Developer except to the extent that Master Developer engages in the development of a structure

or other improvements on a Development Parcel within the Community, in which case Master Developer shall so notify the City Manager in writing.

"Designated Builder Parcel" means any real property within the Community owned by a Designated Builder.

"Design Guidelines" means the document prepared by Master Developer and reviewed and approved by City as a part of this Agreement, which is fully incorporated herein.

"Development Parcels" means legally subdivided parcels of land within the Community that are intended to be developed or further subdivided.

"Development Phase" means each of those portions of the Property described on Exhibit "B" hereto.

"Director of Planning" means the Director of the City's Department of Planning or their designee.

"Director of Public Works" means the Director of the City's Department of Public Works or their designee.

"DWR" means the State of Nevada Division of Water Resources.

"Effective Date" means the date, on or after the adoption by City of an ordinance approving the execution of this Agreement, and the subsequent execution of this Agreement by the Parties, on which this Agreement is recorded in the Office of the County Recorder of Clark County. Each party agrees to cooperate as requested by the other party to cause the recordation of this Agreement without delay.

"Entitlement Request" means a request by Master Developer or a Designated Builder for any land use approval including, without limitation, a tentative or final subdivision map.

"Final Inspection" means date of approved final inspection for a residential home to be occupied.

"Fire Station" means a building used for fire personnel and equipment.

"Fire Station Site" means property owned or controlled by the City at the southwest corner of Grand Teton and Hualapai.

"Grading Plan, Master Rough" means a plan or plans prepared by a Nevada-licensed professional engineer, to:

- (a) Specify areas of less than two hundred (200) acres in size where the Master Developer intends to perform rough grading operations;
- (b) Identify existing elevations and features that are to be preserved within the Community

and do so at a drawing scale not to exceed one hundred feet (100') per inch;

- (c) Identify approximate future elevations and slopes of roadways, paseos, Development Parcels, open space, and drainage areas;
- (d) Identify rough design elevations on a two hundred foot (200') grid, and at street intersections, at pod boundaries and at drainage basin boundaries, or more frequently;
- (e) Identify locations and heights of potential stock piles; and
- (f) Prior to issuance of any rough grading permit, the Director of Public Works may require an update to the Master Drainage Study to address the impacts of phasing or diverted flows if the Master Drainage Study does not contain sufficient detail for that permit.

The Master Rough Grading Plan shall be reviewed by the Director of Public Works for conformance to the grading and drainage aspects of the approved Master Drainage Study and the Director of Planning shall consider the plan for the aesthetic aspects of the plan. The intent of the document is to establish rough grade elevations for both roadways and Development Parcels such that significant unanticipated grade and earthwork differences do not occur at the time of development of individual subdivisions.

"Grading Plan Specific", which accompanies the Technical Drainage Study, means a detailed grading plan for a development site within the Community to further define the grading within residential or commercial subdivision sites as identified in the Master Rough Grading Plan to a level of detail sufficient to support construction drawings, in accordance with the CCRFCD Hydrologic Criteria and Drainage Design Manual.

"Investment Firm" means an entity whose main business is holding securities of other companies, financial instruments or property purely for investment purposes, and includes by way of example, and not limitation, Venture Capital Firms, Hedge Funds, and Real Estate Investment Trusts. "LVVWD" means the Las Vegas Valley Water District.

"Master Developer" means KAG Property, LLC, a Nevada limited liability company, and its successors and assigns as permitted by the terms of this Agreement.

"Master Drainage Study" means the comprehensive hydrologic and hydraulic study to be approved by the Director of Public Works prior to the recordation of Parent Final Map.

"Master HOA" means a unit-owners' association organized pursuant to NRS 116.3101, that is

comprised of owners of residential dwelling units in the Community.

“Master Land Use Plan” means the approved site plan for the Community, which is Exhibit “F”.

“Master Sanitary Sewer Study” means the comprehensive study to be approved by the Director of Public Works prior to the recordation of Parent Final Map.

“Master Studies” means the Master Traffic Study, the Master Drainage Study, and the Master Sanitary Sewer Study.

“Master Traffic Study” means the comprehensive study to be approved by the Director of Public Works prior to the recordation of Parent Final Map.

“Master Utility Improvements” means those water, sanitary sewer, storm water drainage, power, street light and natural gas improvements within and directly adjacent to the Property necessary to serve the proposed development of the Community other than those utility improvements to be located within individual Development Parcels. All public sewer and public drainage easements located outside of public right-of-way must be within common lots of the Master Developer or of the Designated Builder Parcels.

“Master Utility Plan” means a conceptual depiction of all existing and proposed utility alignments, easements or otherwise, within and directly adjacent to the Property necessary to serve the proposed development of the Community, other than those utility improvements to be located within individual Development Parcels. The Master Developer shall align all proposed utilities within proposed public rights-of-way when reasonable and will dedicate such rights-of-way to the City before granting utility easements to specific utility companies, except easements for existing NV Energy facilities constructed pursuant to BLM grants, and easements necessary for existing and future LVVWD water transmission mains.

“Metro” means the Las Vegas Metropolitan Police Department.

“NRS” means the Nevada Revised Statutes, as amended from time to time.

“Off-Property” means outside of the physical boundaries of the Property.

“Off-Property Improvements,” as this definition relates to the Master Studies, means infrastructure improvements located outside the Property boundaries required by the Master Studies or other governmental entities to be completed by the Master Developer due to the development of the Community.

“On-Property” means within the physical boundaries of the Property.

“On-Property Improvements,” as this definition relates to the Master Studies, means infrastructure improvements located within the Property boundaries required by the Master Studies or other governmental entities to be completed by the Master Developer due to the development of the Community.

“Off-Site Improvements” means any and all improvements necessary for a discrete parcel of property as required by the Applicable Rules.

“Parent Map, Tentative” means a preliminary subdivision map of the Property that is the first discretionary request by the Master Developer to legally subdivide the Property pursuant to the provisions of NRS 278 and the UDC. Such map shall delineate all areas to be subdivided, including roadways and related necessary rights-of-way, easements and common areas. Furthermore, such map shall not include any individual residential lots.

“Parent Map, Final” means a final subdivision map of the Property prepared in accordance with any and all conditions of the approved Tentative Parent Map, NRS 278 and the UDC that acts to legally subdivide the Property.

“Parks Agreement” means that agreement between Master Developer and City identifying the rights, duties and obligations of Master Developer and City as to the design, construction and maintenance of public open space, parks, trails and other recreation amenities to be developed within the Community.

"Party," when used in the singular form, means either Master Developer or City and in the plural form of "Parties" means both Master Developer and City.

“Planning Commission” means the City of Las Vegas Planning Commission.

“Planning Department” means the Department of Planning of the City of Las Vegas.

“Property” means that certain 1661.8 gross acres of unimproved real property which is the subject of this Agreement. The legal description of the Property is set forth at Exhibit “A”.

“RTC” means the Regional Transportation Commission of Southern Nevada.

“SNHD” means the Southern Nevada Health District.

“Standard Improvements” as this definition relates to Section Five, herein, means any and all Off-Site Improvements including, but not limited to, streets, sewers, sidewalks, curbs, gutters, storm drains streetlights and trails required in the Parks Agreement.

"Subdivision Map" means any instrument under NRS and the UDC which legally subdivides property or gives the right to legally subdivide property, including, without limitation, parcel maps, division of land into large parcels, Tentative and Final Parent maps, tentative commercial subdivision maps, final commercial subdivision maps, reversionary maps, condominium subdivision maps, or tentative or final residential subdivision maps, for all or a portion of the Community.

"Sub-HOA" means a unit-owners' association organized pursuant to NRS 116.3101, that is comprised of owners of residential dwelling units in the Community and is subordinate to the Master HOA.

"Technical Drainage Study" means: a comprehensive hydrologic study prepared under the direction of and stamped by a Nevada-licensed professional engineer, to:

- (a) Estimate the impact of storm water run-off affecting a Development Parcel from on-property and off-property sources;
- (b) Estimate the impact of any storm water run-off that will affect down-stream off-property real property;
- (c) Identify the impacts of any storm water run-off that will affect the Development Parcel; the on-property proposed drainage facilities and patterns and any off-property drainage facilities and patterns;
- (d) Identify the means and methods necessary to mitigate such impact, including a commitment to implement, or pay for such mitigating improvements within a specified time frame; and
- (e) Identify the future elevations of roadways.

The Technical Drainage Study shall be approved by the Director of Public Works.

"Telecommunication Facility" means a wireless tower or antenna.

"Term" means the term of this Agreement.

"UDC" means the Unified Development Code.

"Village Street" means any of those roadways identified as Village Streets that is depicted on Exhibit "L" and which Master Developer is obligated to construct pursuant to the Master Traffic Study, together with associated curb, gutter, underground utility improvements including fiber optic interconnect, streetlights, traffic control signs and signals other than those for which a fee was paid pursuant to Ordinance 5644, sidewalk or trail and landscaping as indicated on the appropriate cross section in the Design Guidelines. Prior to installation of the final lift of asphalt, Designated Builders may have access for

Designated Builder Parcel underground utility connections.

SECTION TWO

APPLICABLE RULES AND CONFLICTING LAWS

2.01 Reliance on the Applicable Rules. City and Master Developer agree that Master Developer will be permitted to carry out and complete the development of the Community in accordance with the terms of this Agreement and the Applicable Rules. The terms of this Agreement shall supersede any conflicting provision of the City Code except as provided in Section 2.02 below.

2.02. Application of Subsequently Enacted Rules by the City. The City shall not amend, alter or change any Applicable Rule as applied to the development of the Community, or apply a new fee, rule regulation, resolution, policy or ordinance to the development of the Community, except as follows:

(a) The development of the Community shall be subject to the Building Codes in effect at the time of issuance of the permit for the particular development activity.

(b) The application of a new uniformly-applied rule, regulation, resolution, policy or ordinance to the development of the Community is permitted, provided that such action is necessary to protect the health, safety and welfare of City residents, and provided that City gives Master Developer written notice 30 days prior to implementing a new policy.

(c) Nothing in this Agreement shall preclude the application to the Community of new or changed rules, regulations, policies, resolutions or ordinances specifically mandated and required by changes in state or federal laws or regulations. In such event, the provisions of Section 2.04 to 2.06 of this Agreement are applicable.

(d) Should the City adopt or amend rules, regulations, policies, resolutions or ordinances and apply such rules to the development of the Community, other than pursuant to one of the above Sections 2.02(a), 2.02(b) or 2.02(c), the Master Developer shall have the option, in its sole discretion, of accepting such new or amended rules by giving written notice of such acceptance. City and the Master Developer shall subsequently execute an amendment to this Agreement evidencing the Master Developer's acceptance of the new or amended ordinance, rule, regulation or policy within a reasonable time.

2.03. Application of New Fees. Notwithstanding Section 2.02 above, City may increase fees imposed by Ordinance 5644, cost-based processing fees, entitlement processing fees, inspection fees, plan review fees, facility fees, water connection fees or sewer connection fees that uniformly apply to all

development in City.

2.04 Conflicting Federal or State Rules. In the event that any federal or state laws or regulations prevent or preclude compliance by City or Master Developer with one or more provisions of this Agreement or require changes to any approval given by City, this Agreement shall remain in full force and effect as to those provisions not affected, and:

(a) Notice of Conflict. Either Party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, rule, regulation or policy together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(b) Modification Conferences. The Parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law, rule, regulation or policy.

2.05 City Council Hearings. In the event either Party believes that an amendment to this Agreement is necessary due to the effect of any federal or state law, rule, regulation or policy, the proposed amendment shall be scheduled for hearing before the City Council. The City Council shall determine the exact nature of the amendment necessitated by such federal or state law or regulation. Master Developer shall have the right to offer oral and written testimony at the hearing. Any amendment ordered by the City Council pursuant to a hearing contemplated by this Section 2.05 is subject to judicial review, but such review shall be filed within twenty-five (25) calendar days from the date of the hearing. The Parties agree that any matter submitted for judicial review shall be subject to expedited review in accordance with Rule 2.15 of the Eighth Judicial District Court of the State of Nevada.

2.06 City Cooperation. City shall cooperate with Master Developer in securing any City permits, licenses or other authorizations that may be required as a result of any amendment resulting from actions initiated under Section 2.05. As required by the Applicable Rules, Master Developer shall be responsible to pay all applicable fees in connection with securing of such permits, licenses or other authorizations.

SECTION THREE

PLANNING AND DEVELOPMENT OF THE COMMUNITY

3.01. Permitted Uses, Density, Height and Size of Structures. Pursuant to NRS Chapter 278, this Agreement must set forth the maximum height and size of structures to be constructed in the

Community, the density of uses and the permitted uses of the land for each parcel within the Community.

(a) Maximum Units Permitted. The number of dwelling units within the Community shall not exceed nine thousand (9,000).

(b) Permitted Unit Types. The types of buildings and dwelling units permitted in the Community are as set forth in the Design Guidelines.

(c) Density. The maximum density permitted on the Property shall be as set forth in the Kyle Canyon Residential Land Use Table and the related Master Land Use Plan, both of which are attached as Exhibit "F" to this Agreement and incorporated fully herein. Master Developer shall have the right to determine the number of residential dwelling units to be developed on any Development Parcel so long as all the terms and conditions of the Design Guidelines that relate to product density and product type are adhered to.

(d) Maximum Height and Size of Structures. The maximum height and size of structures within the Community is as set forth in the Design Guidelines.

(e) Land Uses. City acknowledges and agrees that the land use categories allowed within the Community are designated on the Master Land Use Plan and the uses permitted within each category are as described in this Agreement and the Design Guidelines. The Kyle Canyon Development Standards and Architectural Design Guidelines are attached as Exhibit "M".

(f) Proximity Restrictions. Pursuant to its general authority to regulate the sale of alcoholic beverages, the City Council declares that the public health, safety and general welfare of the Community are best promoted and protected by requiring that a Special Use Permit be obtained for all Alcohol Related Uses. Uses defined by "Alcohol Related Uses" shall have no specified spacing requirements between similar and protected uses.

3.02 Phasing of Construction.

(a) Generally. While Master Developer has the sole discretion to decide upon the date that it commences development of the Community and any improvements therein, Master Developer agrees to construct certain improvements that are a direct public benefit in coordination with the development milestones set forth in this Section 3.02 and in the Parks Agreement.

(b) Phasing Map. Attached hereto as Exhibit "B" is a map of the Community that generally describes the phases of construction of the Community. The phases may be revised by Master

Developer as necessary to address the residential market demands. Revisions shall be coordinated with the Director of the City's Department of Planning and the Director of Public Works. Prior to the submittal of the Parent Final Map, Master Developer will submit a draft phasing schedule to City.

(c) Phasing Schedule. Master Developer shall complete the construction of all Village Streets within a development phase as follows:

A minimum of two lanes of asphalt pavement on the Village Street providing the main access to a particular Designated Builder Parcel, and a working sanitary sewer connection shall be in place prior to final inspection of any dwelling units within that Designated Builder Parcel. Permanent improvements on all major access Village Streets shall be substantially constructed as determined by the Director of Public Works prior to issuance of any building permits beyond 50% of all units within that Designated Builder Parcel. In addition, a roadway network to the boundary of this Designated Builder Parcel must be completed such that both vehicular and pedestrian access is provided.

All off-site improvements adjacent to that Designated Builder Parcel which will reasonably be used by residents of that parcel, shall be substantially constructed as determined by the Director of Public Works, prior to issuance of building permits beyond 75% of all units within that Designated Builder Parcel. The above thresholds notwithstanding, all adjacent Village Streets shall be substantially complete as determined by the Director of Public Works within 24 months of the commencement of construction of such adjacent Village Streets or as amended with the traffic study phasing plan. All required landscaping along streets adjacent to the Designated Builder Parcel will be complete within 2 months of the final inspection of the final unit in that Designated Builder Parcel.

(d) Site Grading. Master Developer and any Designated Builder may grade portions of the Property in conformance with the approved Master Drainage Study and applicable Development Parcel Technical Drainage Studies prior to approval of any additional drainage studies provided the Master Traffic Study has been approved, a Master Rough Grading Plan(s) has been approved for the area to be graded, the Parent Final Map is recorded and a completion bond has been posted with the City for the cost of the proposed grading. The completion bond will not exceed one million dollars (\$1,000,000.00) for each Master Rough Grading Plan (i.e. 200 acre area). This bond(s) will be released by the City after the work is substantially complete or after Technical Drainage Studies that address the same area of the Property have been approved, whichever occurs first.

(e) Parks. Master Developer shall commence the design and construction of all parks and trails in the Community in accordance with the terms of the Parks Agreement.

(f) Assumption of Responsibility by Multiple Contractors. Permits that are awarded by City for each approved plan set will be based on work to be performed by each contractor. If a plan set includes multiple facets or phases of construction, separate contractors can pull permits. In the event of multiple permits and separate contractors per approved plan, Master Developer will provide City with regular updates identifying the approved permits that have been awarded for each plan.

3.03. Modifications of Design Guidelines. Modifications are changes to the Design Guidelines that apply permanently to all development in the Community. The Parties agree that modifications of the Design Guidelines are generally not in the best interests of the effective and consistent development of the community, as the Parties spent a considerable amount of time and effort negotiating at arms-length to provide for the community as provided by the Design Guidelines. However, the Parties do acknowledge that there are special circumstances which may necessitate the modification of certain provisions of the Design Guidelines to accommodate unique situations which are presented to the Master Developer upon the actual development of the community. Further, the Parties agree that modifications of the Design Guidelines can change the look, feel and construction of the community in such a way that the original intent of the Parties is not demonstrated by the developed product. To that end, the Parties also agree that the only proper entity to request a modification of the Design Guidelines is the Master Developer entity itself, and not a Designated Builder or any other purchaser of real property within the community.

(a) Applicant. Requests for all modifications of the Design Guidelines may be made only by Master Developer.

(b) Minor Modifications. Minor Modifications are changes to the Design Guidelines that include:

- (i) changes in architectural styles, color palettes and detail elements.
- (ii) the addition of similar and complementary residential or commercial uses and architectural styles, color palettes and detail elements.
- (iii) changes in building materials.
- (iv) changes in landscaping materials, plant palettes, and landscaping detail

elements.

(c) Submittal, Review, Decision, and Appeal.

(i) An application for Minor Modification of the Design Guidelines may be made to the Director of Planning for their consideration. The Director of the Department of Planning shall coordinate the City's review of the application and shall perform all administrative actions related to the application.

(ii) The Director of the Department of Planning may, in their discretion, approve a Minor Modification or impose any reasonable condition upon such approval. The Director of Planning shall issue a written decision within 30 business days of receipt of the application. The decision is final unless it is appealed by the Master Developer pursuant to Section (iii) below. Applications for which no written decision is issued within 30 business days shall be deemed approved. If the Director of the Department of Planning rejects a request for a Minor Modification, the request shall automatically be deemed a Major Modification, and at the option of the Master Developer, the decision of the Director of the Department of Planning may be appealed to the Planning Commission.

(iii) Master Developer may appeal any decision of the Director of the Department of Planning to the Planning Commission by providing a written request for an appeal within 10 business days of receiving notice of the decision. Such appeal shall be scheduled for a hearing at the next available Planning Commission meeting.

(iv) Master Developer may appeal any action of the Planning Commission by providing a written request for an appeal within ten (10) business days of the Planning Commission action. Such appeal shall be scheduled for a hearing at the next available City Council meeting.

(d) Major Modifications.

(i) Any application for a modification to the Design Guidelines that does not qualify as a Minor Modification is a Major Modification. All applications for Major Modifications shall be scheduled for a hearing at the next available Planning Commission meeting after the City's receipt of the application or its receipt of the appeal provided for in Section (c) above, whichever is applicable.

(ii) Prior to Planning Commission consideration of a Major Modification that increases density in the Community the Master Developer shall meet and confer with the Director of Public Works or his designee as to whether an update to the Master Studies is required. If the Director of

Public Works or his designee requires an update to one or more of the Master Studies, such update shall be prepared by Master Developer and submitted to the Department of Public Works no later than fifteen (15) business days prior to the Planning Commission hearing

(iii) All actions by the Planning Commission on Major Modifications shall be scheduled for a hearing at the next available City Council meeting.

3.04 Deviation to Design Guidelines. A deviation is an adjustment to a particular requirement of the Design Guidelines for a particular Designated Builder Parcel or lot.

(a) Minor Deviation. A Minor Deviation must not have a material and adverse impact on the overall development of the Community and may not exceed ten percent (10%) of a particular requirement delineated by the Design Guidelines. An application for a Minor Deviation may only be made under the following circumstances:

1) A request for deviation from any particular requirement delineated by the Design Guidelines on ten percent (10%) or less of the lots in a Designated Builder Parcel; or

2) A request for deviation from the following particular requirements on greater than 10% of the lots in a Designated Builder Parcel or on an entire Designated Builder Parcel:

a) Changes in architectural styles, color palettes and detail elements.

b) The addition of similar and complementary residential or commercial uses and architectural styles, color palettes and detail elements.

c) Changes in building materials.

d) Changes in landscaping materials, plant palettes, and landscaping detail elements.

e) Setback encroachments for courtyards, porches, miradors, casitas, architectural projections as defined by the Design Guidelines, garages and carriage units.

f) Height of courtyard walls.

(i) Administrative Review Permitted. An application for a Minor Deviation may be filed by the Master Developer or a Designated Builder as provided herein. Any application by a Designated Builder must include a written statement from the Master Developer that it either approves or has no objection to the request.

(ii) Submittal, Review and Appeal

(1) An application for a Minor Deviation from the Design Guidelines may be made to the Director of the Department of Planning for their consideration. The Director of the Department of Planning shall coordinate the City's review of the application and shall perform all administrative actions related to the application.

(2) The Director of the Department of Planning may, in their discretion, approve a Minor Deviation or impose any reasonable condition upon such approval. The Director of the Department of Planning shall issue a written decision within thirty (30) business days of receipt of the application. The decision is final unless it is appealed by the Master Developer pursuant to Section (3) below. Applications for which no written decision is issued within 30 days shall be deemed approved.

(3) Master Developer or Designated Builder may appeal any decision of the Director of the Department of Planning to the Planning Commission by providing a written request for an appeal within 10 business days of receiving notice of the decision. Such appeal shall be scheduled for a hearing at the next available Planning Commission meeting.

(4) Master Developer or Designated Builder may appeal any action of the Planning Commission by providing a written request for an appeal within ten (10) business days of the Planning Commission action. Such appeal shall be scheduled for a hearing at the next available City Council meeting.

(b) Major Deviation. A Major Deviation must not have a material and adverse impact on the overall development of the Community, may exceed ten percent (10%) of any particular requirement delineated by the Design Guidelines but may not exceed ten percent (10%) of the lots in a Designated Builder Parcel.

(i) City Council Approval Required. An application for a Major Deviation may be filed by the Master Developer or a Designated Builder as provided herein. Any application by a Designated Builder must include a written statement from the Master Developer that it either approves or has no objection to the request. Major Deviations shall be submitted to the Planning Commission for recommendation to the City Council, wherein the City Council shall have final action on all Major Deviations.

(ii) Submittal, Review and Approval.

(1) All applications for Major Deviations shall be scheduled for a hearing at the

next available Planning Commission meeting after the City's receipt of the application.

(2) All actions by the Planning Commission on Major Deviations shall be scheduled for a hearing by the City Council within thirty (30) days of such action.

(c) If Master Developer or Designated Builder requests a deviation from adopted City Infrastructure Improvement Standards or the Kyle Canyon Engineered Details, an application for said deviation shall be submitted to the Land Development Section of the Department of Building and Safety and related fees paid for consideration by the City Engineer pursuant to the Applicable Rules.

(d) Any request for deviation other than those specifically provided shall be processed pursuant to Section 3.03 (Modifications of Design Guidelines).

3.05. Entitlement Requests.

(a) Generally. City agrees to cooperate reasonably with Master Developer to:

(i) Expediently process all Entitlement Requests in connection with the Property that are in compliance with the Applicable Rules and Master Studies; and

(ii) Subject to reasonable conditions not otherwise in conflict with the Applicable Rules or the Master Studies, promptly consider the approval of Entitlement Requests.

(b) Required Zoning Entitlement for Property. The Parties acknowledge and agree that the proper means to legally entitle the Property for eventual development is by way of the Master Developer's application and for a Traditional Development (T-D) Zoning Classification and an approved Traditional Development Community Program for the Property in accordance with the UDC.

The City Council finds that this Agreement, together with the exhibits and attachments, which include the Master Land Use Plan, the Design Guidelines, and the Master Studies fulfill and accomplish the required submittals pursuant to the T-D zoning district and shall be the basis of any approvals granted to the Master Developer under a T-D zoning district application.

(c) Other Entitlement Requests. Except as provided herein including the requirements of Section 7.05, all other Entitlement Request applications shall be processed by City according to the Applicable Rules. The Parties acknowledge that the procedures for processing such Entitlement Request applications are governed by the Code. In addition, any additional application requirements delineated herein shall be supplemental and in addition to such Code requirements.

(i) Parent Tentative Map. Master Developer shall satisfy all Code requirements and

the following conditions precedent before filing an application for consideration of a Parent Tentative Map:

(1) Conditional approval of all Master Studies;

(2) Submittal of an exhibit acknowledging that all parcels within the Property, including those parcels “Not a Part” have, or will be provided legal access; and

(3) Submittal of a Master Utility Plan.

(4) The Parent Tentative Map shall show all additional right-of-way for turn lanes and bus turnouts required by the Master Traffic Study, and such additional rights-of-way shall be dedicated on the Parent Final Map unless an update to the approved Master Traffic Study is submitted to and approved by the Department of Public Works that shows that specific additional rights-of-way are not required. Comply with the recommendations of the approved Master Traffic Study update prior to occupancy of the site. If additional rights-of-way are not required and Traffic Control devices are or may be proposed within or adjacent to this site outside of the public right of way, all necessary easements for the location and/or access of such devices shall be granted on the Parent Final Map. Phased compliance will be allowed if recommended by the approved Master Traffic Study. No recommendation of the approved Master Traffic Study, nor compliance therewith, shall be deemed to modify or eliminate any condition of approval imposed by the Planning Commissioner or the City Council on the development of this site.

(ii) Parent Final Subdivision Map. Master Developer shall satisfy all Code requirements before filing an application for consideration of a Parent Final Subdivision Map; provided that the Parent Final Map shall not contain any individual residential lots and the Parent Final Map shall not require any improvement bonds. However, any subsequent subdivided maps including residential lots shall be bonded pursuant to the requirements of the UDC.

1) The City will accept submittals of tentative subdivision maps for Designated Builder Parcels for review and approval upon the concurrent submittal of the Parent Final Map(s) in response to the comments provided as a result of the City Blueline Technical Review.

(iii) Tentative Subdivision Map. Master Developer and/or Designated Builders shall satisfy all Code requirements for filing of an application for consideration of a tentative subdivision map.

(iv) Site Development Plan Review. Master Developer and/or Designated Builders shall satisfy all Code requirements for the filing of an application for a site development plan review. The

Parties further agree that:

(1) City staff shall consider and make a decision with respect to any application for a Site Development Plan within thirty (30) days of receipt of the application.

(2) Any appeal of an adverse decision on a site development plan review shall be scheduled for a hearing at the next available Planning Commission meeting after the City's receipt of the application for appeal.

(v) Special Use Permits. Master Developer and/or Designated Builders shall satisfy all Code requirements for the filing of an application for a special use permit. The Parties further agree that:

(1) Except as otherwise provided in this Agreement and the Design Guidelines, special use permit applications shall be processed in accordance with the UDC.

(2) City shall not accept any special use permit application without written verification that the Master Developer either approves of the application or has no objection thereto.

(vi) Gaming Enterprise District—Hotel/Casino. A Gaming Enterprise District and an establishment offering non-restricted gaming is approved within the Community. City recognizes that non-restricted gaming establishments have been appropriately included and developed in other master-planned communities throughout the City and Clark County, and City acknowledges that the Community is an appropriate location for a non-restricted gaming establishment as well. A hotel or appurtenant structure associated with a non-restricted gaming establishment shall be no greater than 160 feet in height.

3.06. Dedicated Staff and the Processing of Applications.

(a) Processing Fees, Generally. All Entitlement Requests, Minor or Major Modification Requests and all other requests related to the development of the Community shall pay the fees as provided by the UDC.

(b) Designated Builders will be permitted to submit Applications for building permits for model homes earlier than would otherwise be required under the Applicable Rules upon compliance with the same requirements that City has traditionally imposed on developers for model homes building permits as of the Effective Date.

(c) Inspection Fees. Construction documents and plans that are prepared on behalf of

Master Developer for water facilities such as water pumping stations, water reservoirs, water transmission mains, and water distribution mains, that are reviewed by City for approval, shall not require payment of inspection fees to City unless the water service provider agrees not provide those inspection services.

3.07. Impact Statement as Required by Chapter 481, Statutes of Nevada 1999. The Impact Statement for Projects of Significant Impact within the Las Vegas Urban Growth Zone was timely submitted to City. City received and reviewed the Impact Statement and finds that it satisfies the statutory requirements. The Impact Statement is set forth herein at Exhibit "C."

3.08. Common Name for the Community. Master Developer shall establish a common name for the Community and shall disclose such proposed name to City by written letter to City Manager. City acknowledges that Master Developer will devote substantial resources to promote such common name and protect its value as a unique intellectual property right, which may include filing state and federal registrations for such name. The Parties therefore agree that Master Developer shall have the exclusive right to own, control and license the name. City shall have no obligation to police the use, wrongful or otherwise, of the name by third parties.

3.09. "Saw-tooth Street" Mitigation Required. Where "Not a Part" parcels exist within or adjacent to the Property, that are or will be developed outside of the Community framework, but are bounded on two (or more) sides by developments within the Community, and that result in a "saw-tooth street improvement" (as generally and customarily defined in the Las Vegas Valley) or a non-continuous roadway, Master Developer shall construct such improvements necessary to tie the roadways and any applicable sidewalks or trails together or eliminate the saw-tooth, whichever is necessary. If such construction is restricted due to a lack of available rights-of-way, City agrees to either obtain the necessary rights-of-way at no cost to Developer or relieve Master Developer of the requirement to construct such facilities.

3.10. Identity Monuments. Prior to the construction of any identity monuments on the Property, Master Developer shall submit for approval a plan which includes the design and placement of the identity monuments. Such plan shall be reviewed and acted upon by City within thirty (30) days of receipt by City. If the City does act within thirty (30) days, City shall be conclusively deemed to have approved the design and location of the monuments. Sign permits for such Identity Monuments may be issued at any time

after approval. Any appeal by the applicant of an adverse decision shall be scheduled for a hearing before the City Council within forty-five (45) days of the City's receipt of the application for appeal.

3.11. Common Area Landscaping. All common area landscaping shall be designed and constructed in accordance with the Design Guidelines. Sidewalks, landscaping and other appurtenances within common areas shall be maintained by the Master HOA or a Sub-HOA, at Master Developer's option. Unless provided for in the Parks Agreement, all landscaping that is not the responsibility of a lot owner to maintain shall be maintained by the Master HOA or a Sub-HOA. City and Master Developer, Master HOA and/or Sub HOA shall enter into appropriate encroachment agreements to the City for the installation and maintenance of landscaping at no cost to the City. The parties agree that such right of encroachment is for the mutual benefit of the City, Master Developer and the Master HOA and any Sub-HOA. Master Developer shall have the right to assign such encroachment rights to the Master HOA and any Sub-HOA.

3.12. Streetlight and Banners. The Master Developer shall install an approved City standard streetlight applicable at the time of the construction.

At the Master Developer's option, and with written approval from the City, hanging brackets may be installed on the standard streetlight poles that would support the placement of banners. Banners may only be used for community identification, special events or seasonal identification. If installed, repairs to the poles or brackets as a result of bracket installation, or damage from banners, etc. will be performed by the Master HOA. Prior to installation of banners, the banner mounting hardware must be approved by the City's Traffic Engineering Maintenance Section, in addition to certification and approval from the pole manufacturer as to the type of brackets, materials, mounting methods, size of banner and wind loading is required to maintain structural integrity of the poles and maintain any and all pole warranties and certifications. A certification letter stamped and signed by a registered Professional Engineer must be submitted to the Traffic Engineering Maintenance Section prior to approval for the banners.

3.13. Telecommunications Facilities. The Parties acknowledge that temporary and permanent Telecommunication Facilities are a necessary component to effective communication and will be necessary on the Property. The Parties agree that determining the appropriate location(s), number, and general appearance of Telecommunication Facilities as part of this Agreement will permit both the Master Developer and the City to appropriately plan the Community and will help minimize any potential conflicts

or disputes that might arise in regard to permits for such facilities in the future. Therefore, the Parties agree that Telecommunication Facilities on the Property shall be subject to the following conditions:

(a) The Telecommunication Facilities must comply with Federal Communication Commission standards;

(b) Within six months of the recordation of the Final Parent Map, Master Developer shall submit a Telecommunications Facilities Map for consideration and approval by the Planning Commission and City Council to indicate the location of Telecommunication Facilities.

The Telecommunication Facilities shall be located on the property identified by the Telecommunication Facilities Map, subject to administrative review pursuant to the Code, unless otherwise indicated by the Design Guidelines, and in the case of facilities located on City-owned property, approval of lease from the City is required;

(c) The Telecommunications Facilities shall be architecturally compatible with the Design Guidelines and incorporate reasonable camouflaging/stealth techniques such as architecturally screened roof-mounted antennas or incorporation into flagpoles and the like;

(d) Master Developer shall use all reasonable efforts to ensure co-location of Telecommunication Facilities;

(e) Telecommunication Facilities shall not obstruct public safety communications and the usual and customary transmission of other communication services enjoyed by adjacent property owners; and

(f) Freestanding (stand alone) Telecommunications Facilities not located on City-owned property shall not be in excess of seventy (70) feet in height and shall not be located within one hundred (100) feet of any residential lot.

3.14 Right-Of-Way Agreements For Optical Fiber. City shall permit the installation of optical fiber conduit and optical fiber, together with all necessary appurtenances in all City rights-of-way within the Property upon the proper execution of Right-Of-Way Agreement between the Master Developer, or its designee, and the City.

Such Right-Of-Way Agreement shall include, at a minimum, the following provisions: a phasing plan for such improvements; any such improvements to be constructed within the City's right-of-way shall be indicated and approved on civil improvement plans; any such improvements shall not

exceed 120 feet in length within the public right-of-way, unless otherwise approved by the Director of Public Works; payment by the Master Developer or its designee of an initial fee of \$10,000.00 and a continuing annual fee of \$5,000.00, payment of which is to commence upon the installation of the first instance of optical fiber within the optical fiber conduit, and on every anniversary of the first installation thereafter; Master Developer to notify the Director of Public Works in writing of the first instance of installation of optical fiber; and an annual payment by the Master Developer of \$1.33 for each linear foot of conduit within the City's right-of-way, subject to annual adjustment based upon the Consumer Price Index, All Urban Consumers (CPI-U).

3.15. Blasting. Master Developer agrees to comply with all Code and City written policies as related to blasting.

3.16. Property Dedications to City. Except as provided in Section 7.05, any real property (and fixtures thereupon) transferred or dedicated to City or any other public entity shall be free and clear of any mortgages, deeds of trust, liens or encumbrances (except for any encumbrances that existed on the patent at the time it was delivered to Master Developer from the United States of America).

3.17. Anti-Moratorium. The Parties agree that no moratorium or future ordinance, resolution or other land use rule or regulation imposing a limitation on the construction, rate, timing or sequencing of the development of property including those that affect parcel or subdivision maps, building permits, occupancy permits or other entitlements to use land that are issued or granted by City shall apply to the development of the Community or portion thereof. Notwithstanding the foregoing, City may adopt ordinances, resolutions or rules or regulations that are necessary to:

- (a) comply with any state or federal laws or regulations as provided by Section 2.04, above;
- (b) alleviate or otherwise contain a legitimate, bona fide harmful and/or noxious use of the Property, in which event the ordinance shall contain the most minimal and least intrusive alternative possible, and shall not, in any event, be imposed arbitrarily; or
- (c) maintain City's compliance with non-City and state sewerage, water system and utility regulations. However, the City as the provider of wastewater collection and treatment for this development shall make all reasonable best efforts to insure that the wastewater facilities are adequately sized and of the proper technology so as to avoid any sewage caused moratorium.

In the event of any such moratorium, future ordinance, resolution, rule or regulation,

unless taken pursuant to the three exceptions contained above, Master Developer shall continue to be entitled to apply for and receive consideration of Entitlement Requests and other applications contemplated in Section 3 in accordance with the Applicable Rules.

3.18. Cooperation in Financing. City will execute and deliver within thirty (30) days of a written request from Master Developer, such documents as may be reasonably necessary to acknowledge that:

(a) City has no lien on the Property as a direct result of this Agreement, or disclosure of any City liens that exist; and

(b) City is not aware of a default of this Agreement by Master Developer or if it is in default of this Agreement, the specific ground(s) of default. Nothing herein shall be deemed to relieve Master Developer of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement.

3.19. Franchise Agreements. City warrants that it has entered into franchise agreements with all of the public utility companies that provide adequate utility services to the Property, specifically, NV Energy, Century Link, Southwest Gas Corporation, and Cox Communications.

3.20. Commercial Development Standards and Design Guidelines. All commercial development within the community shall be subject to the commercial development standards and design guidelines pursuant to the C-2 zoning district of the UDC. All permissible uses shall refer to the zoning districts described in the table on page 2 of the Kyle Canyon Development Standards.

SECTION FOUR

MAINTENANCE OF THE COMMUNITY

4.01 Maintenance of Public and Common Areas.

(a) Master Community HOA. Master Developer agrees to organize a Master HOA to manage and maintain sidewalk, common landscape areas, any landscaping within the street rights-of-way including median islands, private drainage facilities located within common elements, including but not limited to, rip-rap lined channels and natural arroyos as determined by the Master Drainage Study or applicable Technical Drainage Studies, but excluding City dedicated public streets, curbs, gutters, streetlights upon City-dedicated public streets, City owned traffic control devices and traffic control signage and permanent flood control facilities as identified on the Regional Flood Control District Master Plan Update that are eligible for maintenance funding. The Master HOA shall be formed at the time of

recordation of the first residential subdivision map, not including the Final Parent Map.

(b) Maintenance Obligations of the Master HOA and Sub-HOAs. Except as provided in the Parks Agreement, the Master HOA and the Sub-HOAs (which hereinafter may be referred to collectively as the "HOAs") shall be responsible to maintain in good condition and repair all common areas that are transferred to them for repair and maintenance (the "Maintained Facilities"), including, but not limited to all developed and undeveloped sidewalks, private streets, private alleys, private drives, landscaped areas, parks and park facilities, trails, amenity zones, drainage facilities within Common Elements, sight visibility zones, and any landscaping in, on and around medians and public rights-of-way.

Master Developer acknowledges and agrees that common-interest communities will be created and governed by Declarations as such term is defined in NRS 116.037. Such Declarations will be recorded by Master Developer or Designated Builders as an encumbrance against the property to be governed by the appropriate HOA. In each case, the HOA shall have the power to assess the encumbered property to pay the cost of such maintenance and repair and to create and enforce liens in the event of the nonpayment of such assessments. Master Developer further agrees that such Declarations will contain a covenant running to the benefit of City, and enforceable by City, that such facilities will be maintained in good condition and repair. Such HOAs will be Nevada not-for-profit corporations with a board of directors elected by the subject owners, provided, however, that Master Developer may control the board of directors of such HOA for as long as permitted by applicable law.

(c) Such Declarations must be executed and recorded with the office of the Clark County Recorder, and shall include the following provisions, the form of which provisions is to be approved by the City:

(i) that the governing board of the HOA must have the power to maintain the Maintained Facilities;

(ii) that the plan described in Section 4.02 can only be materially amended by the HOA board with the written consent of City;

(iii) that the powers under the Declaration cannot be exercised in a manner that would defeat or materially and adversely affect the implementation of the Maintenance Plan; and

(iv) that in the event the HOA fails to maintain the Maintained Facilities in accordance with the provisions of the plan described in Section 4.02, City may exercise its rights under the

Declaration, including the right of City to levy assessments on the property owners for costs incurred by City in maintaining the Maintained Facilities, which assessments shall constitute liens against the land and the individual lots within the subdivision which may be executed upon. City shall have the right to review the Declaration for the sole purpose of determining its compliance with the provisions of this Section 4.

4.02 Maintenance Plan. For park and common areas, maintained by an HOA the Declaration pursuant to this Section 4 shall provide for a plan of maintenance that contains provisions that substantially conform to those set forth in Exhibit "F" of the Parks Agreement.

4.03 Release of Master Developer. Following Master Developer's creation of HOAs to maintain the Maintained Facilities, and approval of the maintenance plan with respect to each HOA, City will hold each HOA responsible for the maintenance of the Maintained Facilities in each particular development covered by each Declaration and Master Developer shall have no further liability in connection with the maintenance and operation of such particular Maintained Facilities. Notwithstanding the preceding sentence, Master Developer shall be responsible for the plants, trees, grass, irrigation systems, and any other botanicals or mechanical appurtenances related in any way to the Maintained Facilities pursuant to any and all express or implied warranties provided by Master Developer to the HOA under NRS Chapter 116.

4.04 City Maintenance Obligation Acknowledged. City acknowledges and agrees that all permanent flood control facilities as identified on the Regional Flood Control District Master Plan Update and eligible for maintenance funding and all City dedicated public streets (excluding any landscape within the right-of-way), associated curbs, gutters, City-owned traffic control devices, signage, those improvements identified with Drainage Studies for public maintenance, and streetlights upon City-dedicated public streets within the Community and accepted by the City will be maintained by City in good condition and repair at the City's sole cost and expense. Master Developer or Master HOA will maintain all temporary detention basins identified in the Master Drainage Study. The City agrees to cooperate with the Master Developer and will diligently work with the CCRFCD to obtain acceptance of all permanent drainage facilities.

SECTION FIVE

PUBLIC FACILITIES

5.01. Elementary, Middle and High School Acreage. Master Developer shall dedicate, at no cost to the CCSD, up to 74.34 acres total for the a total of three school sites (one elementary, one middle and one high school) as shown on the Master Land Use Plan. Master Developer further agrees to construct Master Utility Improvements and Off-site Improvements adjacent to the school parcels contemporaneous with the construction of adjacent Village Streets. Such improvements for each dedicated parcel shall be constructed by Master Developer on such schedule as agreed between Master Developer and the CCSD. Prior to issuances of the first residential dwelling unit permit within the planned community the Master Developer is to enter into a Memorandum of Understanding with the CCSD for dedication, off-sites and development of schools. City agrees that Master Developer has met its obligation in this section if it offers the dedication to the CCSD with restrictions requiring

(a) conformance with the Design Guidelines as agreed upon within the Memorandum of Understanding between the Master Developer and the CCSD;

(b) replacement of any Master Utility Improvements and Off-site Improvements or facilities installed by Master Developer damaged or removed by CCSD; and

(c) a recorded Memorandum of Understanding with the CCSD.

5.02. Fire Protection.

(a) Payment Towards Construction of Fire Station. Master Developer will contribute \$4,100,000 to the City for the sole purpose of construction of a Fire Station at the Fire Station Site by the earlier of June 30, 2017 or the Final Inspection of the 4,500 residential dwelling unit in the Community. However, if by June 30, 2017 fewer than 2,100 residential dwelling units have received the Final Inspection, the Fire Station Contribution will be delayed and at that time, the City and Master Developer will mutually agree on a future Fire Station Contribution date.

If the Final Inspection has not been issued for any residential dwelling unit prior to June 30, 2017, The Master Developer will have no obligation to make the Fire Station Contribution at that time. Upon the issuance of the first Final Inspection after June 30, 2017, the City and Master Developer will mutually agree on a future Fire Station Contribution date.

In any instance, if the City and Master Developer are unable to mutually agree to a future Fire Station Contribution date, the City Council may, after a hearing, withhold the issuance of residential dwelling unit or commercial building permits within the Community. City shall provide Master Developer

written notice at least fifteen(15) days prior to such hearing.

Master Developer agrees to provide all wet and dry utility services to the Fire Station Site prior to the date of the Fire Station Contribution. The City agrees to construct and operate the Fire Station within 24-months after the date of the Fire Station Contribution.

5.03. Regional Transportation Center.

(a) Dedication of a Transit Center Site. Master Developer shall, at no cost to City or the RTC, dedicate up to two and one-half (2.5) gross acres of land to serve as a transit hub and transfer point for various bus routes. Such dedication shall be subject to a restriction that requires the RTC to allow, at no cost, at least one-half (1/2) acre of the RTC parcel to be used for parking facilities that serve both the RTC parcel and the Property. Master Developer shall construct Standard Improvements adjacent to the RTC parcel contemporaneous with the construction of adjacent Village Streets. The Transit Center shall be in the location shown on the Master Land Use Plan or in such alternate location approved by Master Developer, City and the RTC. So long as the alternative location is within the Blended Land Use district, an amendment to the Master Land Use Plan shall not be required. Master Developer is under no obligation to dedicate any land to the RTC other than as required herein.

(b) Design of the Regional Transportation Center. RTC shall design the Transit Center in accordance with the Design Guidelines, subject to the approval of Master Developer and City.

5.04 Police Services. Designated Builders shall pay City \$218 per residential unit for use in the construction of a Metro substation to serve the Community and the surrounding area. Such payment shall be made concurrent with the building permit issued for each residential unit. City and Metro agree that all residential unit fees collected from development in the Community for a Metro substation shall be used the for construction of a Metro substation that is no more than one mile from the Community and shall be constructed and operating within one year from the completion of the Community.

SECTION SIX

OPEN SPACE, PARKS, TRAILS AND RECREATION FACILITIES

6.01. Parks Agreement. There exists a Parks Agreement describing the Parties' responsibilities regarding the design, construction, ownership and maintenance responsibilities for the open space, parks, trails and other recreation amenities to be provided by Master Developer. Such agreement is attached hereto as Exhibit "D" and incorporated fully herein. The parties acknowledge that the Parks

Agreement is a vital and integral part of this Agreement, and this Agreement would not have otherwise been approved and executed without the prior approval of the Parks Agreement by the City Council.

SECTION SEVEN

PROJECT INFRASTRUCTURE IMPROVEMENTS

7.01. Conformance to Master Studies. Master Developer agrees to construct and dedicate to City or other governmental or quasi-governmental entity or appropriate utility company, all infrastructure necessary for the development of the Community as required by the Master Studies and this Agreement.

7.02. Acquisition of Rights-of-Way and Easements. City acknowledges that certain rights-of-way and easements outside the boundaries of the Property may be necessary for the construction of the necessary infrastructure improvements. City shall assist the Master Developer in obtaining the necessary rights-of-way, easements or other interests not owned by Master Developer necessary to construct the necessary infrastructure improvements. With regard to any necessary roadways and/or necessary drainage corridors that are proposed to abut or cross BLM lands, Master Developer shall submit all required documentation to City to enable City to acquire the necessary rights from the BLM. City will accept and initiate processing these applications through the BLM upon submittal of the Master Studies and will diligently pursue approval of the applications in a timely manner. In the event any required rights-of-way, easements or other interests can not be obtained, City may allow a modification of the appropriate approved Master Study to permit development of the Community without such right-of-way, easements or other interest.

7.03. Water Supply. The Parties acknowledge that City currently has no role in the allocation of water to customers of the Las Vegas Valley Water District. If, however, City assumes any role in water allocation during the term of this Agreement, City agrees it will endeavor to allocate or cause to be allocated to the Community water in order that the development of the Community will continue uninterrupted. City and Master Developer will cooperate with the Las Vegas Valley Water District in granting over their respective properties reasonable easements or right-of-ways either On-Property or Off-Property necessary for the installation of water facilities to serve the development. Master Developer agrees to execute all Affidavits of Waiver and Consent forms required by City in order for water laterals and mains to be a part of any proposed special improvement districts.

7.04 Sanitary Sewer.

(a) Design and Construction of Sanitary Sewer Facilities Shall Conform to the Master Sanitary Sewer Study. Master Developer shall design and construct all sanitary sewer main facilities that are identified as Master Developer's responsibility in the Master Sanitary Sewer Study. Master Developer acknowledges and agrees that this obligation shall not be delegated to, transferred to or completed by any Designated Builder.

(b) Off-Site Sewer Capacity. The Master Developer and the City have analyzed the effect of the buildout of the Community on offsite sewer pipelines. The Master Developer agrees to install parallel sewer lines as indicated in the letter report by Slater Hanifan Group dated May 23, 2011 and included in Exhibit "H". The construction of offsite sewer pipelines will be performed at the percentage buildout shown in this analysis. Master Developer and the City agree that the analysis may need to be revised as exact development patterns in the Community become known. All future offsite sewer analysis for the Community will be performed using a full pipe capacity, d/D ratio of 0.90.

7.05 Traffic Improvements.

(a) Obligation to Construct Village Streets solely on Master Developer. Master Developer is obligated to, and shall design and construct all Village Streets subject to Section 7.04 (b), as indicated in the Master Traffic Study. Master Developer acknowledges and agrees that this obligation shall not be delegated to, transferred to or completed by any Designated Builder.

(b) Traffic Signal Improvements. Master Developer or Designated Builders shall comply with Ordinance 5644 (Bill 2003-94), as amended from time to time by the City. The City, pursuant to Ordinance 5644, will construct the traffic signals identified in the Master Traffic Study.

(c) Updates. If required by the Director of Public Works, Master Developer or a Designated Builder shall submit and receive conditional approval of an update of the Master Traffic Study or a Designated Builder site specific traffic impact analysis prior to the approval of the following land use applications: tentative map (residential or commercial); site development plan review (multi-family or commercial); parcel map; or special use permit, but only if the applications propose land use, density, or entrances that substantially deviate from the approved Master Study or the development differs substantially in the opinion of the City Traffic Engineer from the assumptions of the approved Master Traffic Study. Additional public right-of-way may be required to accommodate such changes.

(d) Construction Phasing. Master Developer shall submit a phasing plan and estimated

sequence for all required On-Property and Off-Property street improvements as a part of the Master Traffic Study. City and Master Developer agree the phasing plan is fluid and is dictated by development. Accordingly, the phasing plan may be modified based on the proposed development in the Community.

(e) Kyle Canyon Engineered Details. Design Guidelines shall include engineered details for each public street type, private street type, alley type, trail type, sidewalk type, path type or other roadways or pedestrian travel paths that differ from the City's Standard Drawings for the City's review and approval.

(f) Timing of Subdivision Improvements. Civil improvement plans for construction upon a Designated Builder Parcel may be submitted to Public Works after all of the following have occurred:

(i) conditional approval or concurrent with second submittal of a Technical Drainage Study for a Designated Builder Parcel;

(ii) if required by the Public Works Director, approval or concurrent with second submittal of a traffic study for a Designated Builder Parcel;

(iii) approval of a tentative map or site development plan review for the Designated Builder Parcel, as applicable; and

(iv) submittal upon receipt of first review for the master infrastructure of the civil improvement plans to the City for the surrounding master infrastructure.

Surrounding master infrastructure civil improvement plans for infrastructure that required to provide service to the builder parcel must be approved prior to or concurrent with approval of civil improvement plans for the Designated Builder Parcel. Infrastructure that is adjacent to but not utilized by the builder parcel shall be required in compliance with Section 3.02(c).

7.06 Sheep Mountain Parkway. Currently, the Property is encumbered by an irrevocable BLM Right-of-Way grant in favor of the City for the proposed Sheep Mountain Parkway as depicted on Exhibit "I" (the "Existing ROW"). The City has planned the future Sheep Mountain Parkway that will allow the right-of-way to be modified approximately 50.1 acres as depicted on Exhibit "J". In exchange for this reduction of right-of-way, the Master Developer shall construct a permanent detention basin in the area depicted on the Master Land Use Plan. The Master Developer agrees to remove interim detention basins located within Sheep Mountain Parkway right-of-way and to locate permanent detention basin(s) along the Puli Road alignment. The City will receive a cost benefit of approximately \$7,000,000 of future

construction costs through the construction of a permanent detention basin upstream of the Sheep Mountain Parkway Flood Control Facilities. Attached as Exhibit "L" is a memorandum for the estimate of probable cost between interim detention basin removal and permanent detention basins. The City further agrees to submit and approve a vacation of the existing right-of-way. However, the vacation will not be recorded until the Master Developer records the Parent Final Map which includes a requirement for KAG Property, LLC to dedicate an additional 4.3 acres in conformance with Exhibit "J" that is not encumbered by the City's BLM grant N-77772. The City will follow the Applicable Rules if any property proposed for Sheep Mountain Parkway is to be vacated.

7.07 Other Roadway Improvements.

(a) Kyle Canyon Interchange. Master Developer will contribute \$1,000,000 to the City for the design, construction or reimbursement to City (if the interchange is constructed) of the Kyle Canyon Road – US 95 interchange three years after the issuance of the first Final Inspection for a residential home within the Community. Master Developer will make a second \$1,000,000 contribution to the City one year after the first contribution. However, if 1000 residential units have not been constructed within three years of the first residential home Final Inspection approval, the Master Developer and the City shall mutually agree on an extension of the first contribution. At the City's discretion, the City may use the Developer contribution for design of Kyle Canyon Road/US 95 Interchange for the design, right-of-way acquisition or construction of the following projects:

- 1) Kyle Canyon Interchange at US95.
- 2) Shaumber Road – Centennial to Ann.
- 3) Puli Road – Grand Teton to Ann.
- 4) Oso Blanca Road – Kyle Canyon Road to Tee Pee.
- 5) Skypoint Road – Hualapai to Log Cabin.
- 6) Alpine Ridge – Iron Mountain to Kyle Canyon.
- 7) Hualapai – Oso Blanca to G.E.D. site boundary.
- 8) Hualapai – Centennial to Grand Teton.

City shall petition the Regional Transportation Commission to place the Kyle Canyon Road Interchange on the capital projects list for the year 2026.

(b) Hualapai Interchange. City and Master Developer agree to cooperate and work in good

faith to request that Clark County and RTC prioritize construction of appropriate improvements to the Hualapai/215 interchange and obtain any available Federal, State, RTC or Clark County funding for such construction.

7.08 Flood Control.

(a) Obligation to Construct Flood Control Facilities solely on Master Developer. Master Developer shall design and construct flood control facilities that are identified as Master Developer's responsibility in the Master Drainage Study. Master Developer acknowledges and agrees that this obligation shall not be delegated to, transferred to or completed by any Designated Builder.

(b) Other Governmental Approvals. The Clark County Regional Flood Control District, the Nevada Department of Transportation and any other state or federal agencies, as required, shall approve the Master Drainage Study prior to final approval from City. Clark County Department of Public Works shall receive a copy of the Master Drainage Study and shall have the opportunity to comment.

(c) Updates. The Director of Public Works may require an update to the Master Drainage Study or Master Technical Study as a condition of approval of the following land use applications: tentative map, residential or commercial; site development plan review, multifamily or commercial; or parcel map if those applications are not in substantial conformance with the approved Master Land Use Plan or Master Drainage Study. The update must be approved prior to the approval of any construction drawings and the issuance of any final grading permits. An update to the exhibit in the approved Master Drainage Study depicting proposed development phasing in accordance with the Development Agreement shall be submitted for approval by the Flood Control Section.

(d) Regional Flood Control Facility Construction by Master Developer. The Master Developer agrees to design and substantially complete the County Regional Flood Control District facilities as defined in the Master Drainage Study pursuant to an amendment to the Regional Flood Control District 2008 Master Plan Update prior to the final inspection of the first unit within each area protected by the appropriate drainage facility.

If required by the Master Drainage Study or technical drainage studies, the above facilities or portions thereof shall be constructed prior to issuance of any building permits for affected downstream units or alternate flood protection or mitigation acceptable to City must be provided.

(e) Construction Phasing. Master Developer shall submit a phasing and sequencing plan for

all drainage improvements within the Community as a part of the Master Drainage Study. The phasing plan and schedule must clearly identify drainage facilities (interim or permanent) necessary prior to permitting any downstream units for construction.

SECTION EIGHT

SPECIAL IMPROVEMENT DISTRICT

8.01 City agrees to consider and, if appropriate, process and facilitate, with due diligence, any applications made by Master Developer for the creation of a special improvement district. If a request to create a special improvement district is made by Master Developer, the Parties agree to utilize the City's Master Developer Special Improvement District Guidelines, which are attached hereto at Exhibit "E." City shall cooperate with the Master Developer to include all eligible projects for a special improvement district. The Parties agree that nothing contained in this Section or elsewhere in this Agreement constitutes in any way a pre-approval or authorization of any such special improvement district and any special improvement district must be processed and approved pursuant to State law and the Applicable Rules.

SECTION NINE

REVIEW OF DEVELOPMENT

9.01 Frequency of Reviews. As provided by NRS Chapter 278, Master Developer shall appear before the City Council to review the development of the Community. The Parties agree that the first review occur no later than twenty-four (24) months after the Effective Date of this Agreement, and again every twenty-four (24) months on the anniversary date of that first review thereafter, or as otherwise requested by City upon fourteen (14) days written notice to Master Developer. For any such review, Master Developer shall provide, and City shall review, a report submitted by Master Developer documenting the extent of Master Developer's and City's material compliance with the terms of this Agreement during the preceding period.

The report shall contain information regarding the progress of development within the Community, including, without limitation:

(a) data showing the total number of residential units built and approved on the date of the report;

- (b) specific densities within each subdivision and within the Community as a whole; and
- (c) the status of development within the Community and the anticipated phases of development for the next calendar year.

In the event Master Developer fails to submit such a report within thirty (30) days following written notice from City that the deadline for such a report has passed, Master Developer shall be in default of this provision and City shall prepare such a report and conduct the required review in such form and manner as City may determine in its sole discretion. City shall charge Master Developer for its reasonable expenses, fees and costs incurred in conducting such review and preparing such report. If at the time of review an issue not previously identified in writing is required to be addressed, the review at the request of either party may be continued to afford reasonable time for response

9.02 Opportunity to be heard. The report required by this Section shall be considered solely by the City Council. Master Developer shall be permitted an opportunity to be heard orally and in writing before the City Council regarding performance of the parties under this Agreement. The Director of the Department of Planning may, in their discretion, provide copies of the report to members of City's Planning Commission for their information and use.

9.03 Action by the City Council. At the conclusion of the public hearing on the review, the City Council may take any action permitted by NRS 278.0205 and/or this Agreement.

SECTION TEN

DEFAULT

10.01 Opportunity to Cure; Default. In the event of any noncompliance with any provision of this Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail a ten (10) day notice of default and opportunity to cure. The time of notice shall be measured from the date of receipt of the certified mailing. The notice of noncompliance shall specify the nature of the alleged noncompliance and the manner in which it may be satisfactorily corrected, during which ten (10) day period the party alleged to be in noncompliance shall not be considered in default for the purposes of termination or institution of legal proceedings.

If the noncompliance cannot reasonably be cured within the ten (10) day cure period, the non-compliant Party may timely cure the noncompliance for purposes of this Section 10 if it commences the appropriate remedial action with the ten (10) day cure period and thereafter diligently prosecutes such

action to completion within a period of time acceptable to the non-breaching Party. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than thirty (30) days from the date the ten (10) day notice of noncompliance and opportunity to cure was mailed to the non-compliant Party.

If the noncompliance is corrected, then no default shall exist and the noticing party shall take no further action. If the noncompliance is not corrected within the relevant cure period, the non-complaint party is in default, and the party alleging non-compliance may declare the breaching party in default and elect any one or more of the following courses.

(a) Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged noncompliance, the party alleging the default may give notice of intent to amend or terminate this Agreement as authorized by NRS Chapter 278. Following any such notice of intent to amend or terminate, the matter shall be scheduled and noticed as required by law for consideration and review solely by the City Council.

(b) Amendment or Termination by City. Following consideration of the evidence presented before the City Council and a finding that a default has occurred by Master Developer and remains uncorrected, City may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any vested right in favor of Master Developer, as determined under the Applicable Rules, existing or received as of the date of the termination. Master Developer shall have twenty-five (25) days after receipt of written notice of termination to institute legal action pursuant to this Section to determine whether a default existed and whether City was entitled to terminate this Agreement.

(c) Termination by Master Developer. In the event City substantially defaults under this Agreement, Master Developer shall have the right to terminate this Agreement after the hearing set forth in this Section. Master Developer shall have the option, in its discretion, to maintain this Agreement in effect, and seek to enforce all of City's obligations by pursuing an action pursuant to Section 10.03.

10.02. Unavoidable Delay; Extension of Time. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, or acts of God. If written notice of any such delay is given to one party or the other within thirty (30) days after the commencement thereof, an automatic extension of time, unless otherwise objected to by the party in receipt of the notice within thirty

(30) days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between City and Master Developer. Any such extensions of time shall have no effect upon the timing of and the conclusions reached in the reviews to be conducted pursuant to Section 9 above.

10.03. Limitation on Monetary Damages. City and the Master Developer agree that they would not have entered into this Agreement if either were to be liable for monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement. Accordingly, City and Master Developer may pursue any course of action at law or in equity available for breach of contract, except that neither Party shall be liable to the other or to any other person for any monetary damages based upon a breach of this Agreement or any other allegation or cause of action based upon or with respect to this Agreement.

10.04. Venue. Jurisdiction for judicial review under this Agreement shall rest exclusively with the Eight Judicial District Court, County of Clark, State of Nevada or the United States District Court, District of Nevada.

10.05. Waiver. Failure or delay in giving notice of default shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect of any default shall not operate as a waiver of any default or any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any of its rights or remedies.

10.06. Applicable Laws; Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. Each party shall bear its own attorneys' fees and court costs in connection with any legal proceeding hereunder.

SECTION ELEVEN

GENERAL PROVISIONS

11.01. Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the twentieth (20th) anniversary of the Effective Date, unless terminated earlier pursuant to the terms hereof. City agrees that the Master Developer shall have the right to request extension of the Term of this Agreement for an additional five (5) years upon the following conditions:

(a) Master Developer provides written notice of such extension to City at least one hundred-eighty (180) days prior to the expiration of the original Term of this Agreement;

(b) Master Developer is not in default of this Agreement; and

(c) Master Developer and City enter into an amendment to this Agreement memorializing the extension of the Term.

11.02. Assignment.

The parties acknowledge that the intent of this Agreement is that there is a Master Developer responsible for all of the obligations in this Agreement throughout the Term of this Agreement.

(a) At any time during the Term, Master Developer and its successors-in-interest shall have the right to sell, assign or transfer all of its rights, title and interests to this Agreement (a "Transfer") to any person or entity (a "Transferee"). Except in regard to Transfers to Pre-Approved Transferees (which does not require any consent by the City as provided in Section 11.02(b) below), prior to consummating any Transfer, Master Developer shall obtain from the City written consent to the Transfer as provided for in this Section 11, which consent shall not be unreasonably withheld, delayed or conditioned. Master Developer's written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City to consider and respond to Master Developer's request. Master Developer shall provide information to the City that Transferee, its employees, consultants and agents (collectively "Transferee Team") has i) the financial resources necessary to develop the Community, in accordance with the terms and conditions of this Agreement, or (ii) experience and expertise in developing projects similar in scope to the Community. The Master Developer's request, including approval of the Assignment and Assumption Agreement reasonably acceptable to the City, shall be promptly considered by the City Council for their approval or denial within forty-five (45) days from the date the City receives Master Developer's written request. Upon City's approval and the full execution of an Assignment and Assumption Agreement by City, Master Developer and Transferee, the Transferee shall thenceforth be deemed to be the Master Developer and responsible for all of the obligations in this Agreement.

(b) Pre-Approved Transferees. Notwithstanding anything in this Agreement to the contrary, the following Transferees constitute "Pre-Approved Transferees," for which no City consent shall be required provided that such Pre-Approved Transferees shall assume in writing all obligations of the

Master Developer hereunder by way of an Assignment and Assumption Agreement. The Assignment and Assumption Agreement shall be approved by the City Manager, whose approval shall not be unreasonably withheld, delayed or conditioned. The Assignment and Assumption Agreement shall be executed by the Master Developer and Pre-Approved Transferee and acknowledged by the City Manager. The Pre-Approved Transferee shall thenceforth be deemed to be the Master Developer and be responsible for all of the obligations in this Agreement.

- 1) An entity owned or controlled by Master Developer;
- 2) Any Investment Firm that does not plan to develop the Property. If Investment Firm desires to i) develop the Property or ii) Transfer the Property to a subsequent Transferee that intends to develop the Property, the Investment Firm shall obtain from the City written consent to i) commence development or ii) Transfer the Property to a subsequent Transferee that intends to develop the Property, which consent shall not be unreasonably withheld, delayed or conditioned. Investment Firm's written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City Council consider. Investment Firm shall provide information to the City that Investment Firm or Transferee and their employees, consultants and agents (collectively "Investment Firm Team" and "Transferee Team", respectively) that intends to develop the Property has i) the financial resources necessary to develop the Community, in accordance with the terms and conditions of this Agreement, or (ii) experience and expertise in developing projects similar in scope to the Community. The Investment Firm's request, including approval of the Assignment and Assumption Agreement reasonably acceptable to the City, shall be promptly considered by the City Council for their approval or denial within forty-five (45) days from the date the City receives Master Developer's written request. Upon City's approval and full execution of an Assignment and Assumption Agreement by City, Investment Firm and Transferee, the Transferee shall thenceforth be deemed to be the Master Developer and responsible for the all of the obligations in this Agreement.

(c) In Connection with Financing Transactions. Master Developer has full and sole discretion and authority to encumber the Property or portions thereof, or any improvements thereon, in connection with financing transactions, without limitation to the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefrom, and may enter into such transactions at any time and from time to time without permission of or notice to City. All such financing transactions shall

be subject to the terms and conditions of this Agreement.

11.03. Sale or Other Transfer Not to Relieve the Master Developer of its Obligation. Except as expressly provided herein in this Section 11, no sale or other transfer of the Property or any subdivided development parcel shall relieve Master Developer of its obligations hereunder, and such assignment or transfer shall be subject to all of the terms and conditions of this Agreement, provided, however, that no such purchaser shall be deemed to be the Master Developer hereunder. This Section shall have no effect upon the validity of obligations recorded as covenants, conditions, restrictions or liens against parcels of real property.

11.04 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, the Master Developer shall hold City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Master Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on Master Developer's behalf which relate to the development of the Community. Master Developer agrees to and shall defend City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Master Developer's activities in connection with the development of the Community. Master Developer and City agree to equally pay all costs and attorneys fees for a defense in any legal action filed in a court of competent jurisdiction by a third party alleging any such claims or challenging the validity of this Agreement, except for a defense in any legal action related to waiver of proximity restrictions specified in the UDC between Alcohol Related Uses and other Alcohol Related Uses and between Alcohol Related Uses and parks and/or schools. The provisions of this Section shall not apply to the extent such damage, liability, or claim is proximately caused by the intentional or negligent act of City, its officers, agent, employees, or representatives. This section shall survive any termination of this Agreement.

11.05. Binding Effect of Agreement. Subject to Section 11.02, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties' respective assigns and successors-in-interest and the property which is the subject of this Agreement.

11.06 Relationship of Parties. It is understood that the contractual relationship between City and

Master Developer is such that Master Developer is not an agent of City for any purpose and City is not an agent of Master Developer for any capacity.

11.07 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or mailed by certified mail postage prepaid, return receipt requested. Notices shall be addressed as follows:

To City:	City of Las Vegas 400 Stewart Avenue Las Vegas, Nevada 89101 Attention: City Manager Attention: Director of the Department of Planning
To Owner:	KAG Property, LLC c/o David L. Ash Wells Fargo Special Situations Group-ORE 600 California St., 19 th Floor San Francisco, CA 94108

Either Party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the date delivery of mail is first attempted.

11.08 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all of any part of the subject matter hereof.

11.09 Waivers. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate officers of Master Developer or approved by the City Council, as the case may be.

11.010 Recording; Amendments. Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of City and Master Developer in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon completion of the performance of this Agreement, a statement evidencing said completion, shall be signed by the appropriate officers of the City and Master Developer and shall be recorded in the Official Records of Clark County, Nevada. A

revocation or termination shall be signed by the appropriate officers of the City or Master Developer and shall be recorded in the Official Records of Clark County, Nevada.

11.11 Headings; Exhibits; Cross References. The recitals, headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement are incorporated herein by the references contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

11.12 Release. Each residential lot shown on a recorded Subdivision Map within the Community shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a building permit for the construction of a residence thereon.

11.13 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

11.14 Exercise of Discretion. Wherever a Party to this Agreement has discretion to make a decision, it shall be required that such discretion be exercised reasonably unless otherwise explicitly provided in the particular instance that such decision may be made in the Party's "sole" or "absolute" discretion or where otherwise allowed by applicable law..

11.15 No Third Party Beneficiary. This Agreement is intended to be for the exclusive benefit of the parties hereto and their permitted assignees. No third party beneficiary to this Agreement is contemplated and none shall be construed or inferred from the terms hereof. In particular, no person purchasing or acquiring title to land within the Community or residing in the Community shall, as a result of such purchase, acquisition or residence, have any right to enforce any obligation of Master Developer or City nor any right or cause of action for any alleged breach of any obligation hereunder by either party

hereto.

11.16 Gender Neutral. In this Development Agreement (unless the context requires otherwise), the masculine, feminine and neutral genders and the singular and the plural include one another.

In Witness Whereof, this Agreement has been executed by the parties on the day and year first above written.

CITY:

OWNER:

CITY COUNCIL, CITY OF LAS VEGAS

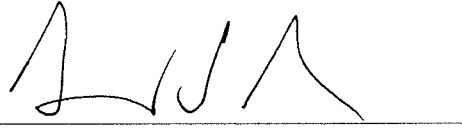
KAG PROPERTY, LLC

By:


Mayor

Carolyn G. Goodman, Mayor

By:



Name:

DAVID L. ASIT

Approved as to Form:

Title:

VICE PRESIDENT


Deputy City Attorney

5/31/12

John S. Ridilla
Deputy City Attorney

SUBSCRIBED AND SWORN TO before me

on this _____ day of _____,

2011.

SEE ATTACHED

Attest:

City Clerk

Notary Public in and for said County and State

By:


Beverly Bridges, City Clerk

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

 Signature of Document Signer No. 1

 Signature of Document Signer No. 2 (if any)

State of California

County of SAN FRANCISCO

Subscribed and sworn to (or affirmed) before me

on this 24th day of MAY, 2012,
 Date Month Year
 by

(1) DAVID L. ASH,
 Name of Signer

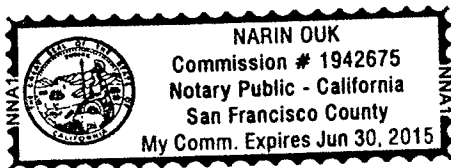
proved to me on the basis of satisfactory evidence
 to be the person who appeared before me (.) (✓)

(and

(2) _____,
 Name of Signer

proved to me on the basis of satisfactory evidence
 to be the person who appeared before me.)

Signature *[Signature]*
 Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove valuable
 to persons relying on the document and could prevent fraudulent removal
 and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: KYLE CANYON PARKS AGREEMENT

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**RIGHT THUMBPRINT
 OF SIGNER #1**
 Top of thumb here

**RIGHT THUMBPRINT
 OF SIGNER #2**
 Top of thumb here

KYLE CANYON DEVELOPMENT AGREEMENT

EXHIBITS

Exhibit "A"	Property Description
Exhibit "B"	Phasing Map
Exhibit "C"	Impact Statement
Exhibit "D"	Parks Agreement
Exhibit "E"	Developer Special Improvement Guidelines
Exhibit "F"	Residential Land Use Table and Master Land Use Plan
Exhibit "G"	Master Drainage and Traffic Studies (on disk)
Exhibit "H"	Offsite Sewer Capacity Letter
Exhibit "I"	BLM Right-of-Way Grant
Exhibit "J"	Sheep Mountain Parkway Right-of-Way Reduction
Exhibit K"	Memorandum Cost between Interim and Permanent Detention Basins
Exhibit "L"	Village Street and Trail Section
Exhibit "M"	Kyle Canyon Development Standards and Architectural Design Guidelines